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SOME PRACTICAL ADVICE FOR A JOINT FORCE COMMANDER CONTEMPLATING THE USE OF BLOCKADE, VISIT AND SEARCH, MARITIME INTERCEPTION OPERATIONS, MARITIME EXCLUSION ZONES, CORDON SANITAIRE, AND MARITIME WARNING ZONES DURING TIMES OF INTERNATIONAL ARMED CONFLICT

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements for the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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Great captains have no need for counsel. They study the questions which arise, and decide them, and their entourage has only to execute their decisions. But such generals are stars of the first magnitude who scarcely appear once in a century. In the great majority of cases, the leader of the army cannot do without advice...

Field Marshal Helmuth Graf von Moltke, 1862, letter

Introduction

In times of international armed conflict, today's Joint Force Commander (JFC) has a lot to think about. While the end of the Cold War has virtually eliminated the threat of a major conventional maritime "blue-water" engagement at sea, increased economic well-being and the proliferation of high-technology weapons (including diesel submarines) have enabled a greater number of States to pose a viable military threat to United States interests abroad.[1]

Recognizing this fact, as well as the much publicized theory that aversion to casualties adversely impacts U. S. national will to support military operations, this paper will focus on the Joint Force Commander's ability to leverage international law (relating to blockade, visit and search, maritime interception operations, maritime exclusion zones, *cordon sanitaire*, and maritime warning zones) as an asymmetric means to enhance naval operations and, derivatively, reduce American casualties during times of international armed conflict. Specifically, this paper will historically analyze the aforementioned areas of international law to educate and impress upon the Joint Force Commander that these maritime methods of warfare are invaluable *tools* in the JFC's toolbox.

By doing so, hopefully today's Joint Force Commander will recognize that "international law represents a dangerous snare to the unwary commander, [but] a valuable weapon to the wily one."[2]

Brief Legal Backdrop

The principle of freedom of the seas, *Mare Liberum* ("The Free Sea") guarantees that all States have certain rights, to include freedom of navigation in international waters.[3] And while this high seas

freedom is expressly recognized by customary international law as reflected in the 1982 United Nations Law of the Sea Convention, the LOS Convention does not prohibit a belligerent State from imposing *reasonable* limitations on this high seas right.[4] For example, historically, and by varying degrees of intensity (and legality), freedom of navigation in international waters has been restricted by war zones,[5] blockades,[6] quarantine,[7] visit and search,[8] maritime interception operations,[9] maritime exclusion zones,[10] maritime warning zones,[11] and weapons test firings.[12]

Therefore, during periods of international armed conflict, the international community has generally accepted (and agreed to be bound) by the traditional legal doctrines of blockade and visit and search as belligerent rights.[13] The legal standing of maritime exclusion zones remains debatable, however, with a present trend towards international acceptance of this concept based upon recent State practice. Specifically, the legality of a declared maritime exclusion zone will generally be conditioned upon a prima facie showing of strict military necessity coupled with demonstrated *reasonable* constraints placed upon neutral shipping.[14]

Requirement of "International Armed Conflict"

The first thing that a Joint Force Commander must recognize before contemplating the use of blockade, visit and search, or a maritime exclusion zone in international waters is that these military actions (which constitute "use of force" under the U.N. Charter[15] and impinge on the freedom of navigation of neutral States) are the rights possessed only by *belligerent* States.[16] At first blush, this belligerency requirement would not appear to be a major stumbling block for the Joint Force Commander. However, as demonstrated recently in Kosovo, before the National Command Authorities (NCA) will permit a Joint Force Commander to exercise "belligerent rights," the President and Secretary of Defense must first acknowledge that the nation is, in fact, a *belligerent* State. The complexity of this apparently basic concept was recently demonstrated by the United States during Operation Allied Force.

Specifically, in response to the 31 March 1999 capture of three American soldiers from the 1st Infantry Division by Yugoslav forces along the border between Yugoslavia and Macedonia, President Clinton and Secretary of Defense Cohen initially stated that these three soldiers were "illegally abducted."[17] This official NCA position was announced despite the fact that the American soldiers were captured while conducting a reconnaissance patrol along the Kosovo-Macedonia border, while carrying small arms, with a .50 caliber machine gun mounted on their vehicle, and amidst ongoing NATO combat air operations in Serbia.[18] Regardless, United States political leadership initially referred to the three captured American soldiers as "detainees" vice "prisoners of war."[19] Ultimately, after recognizing the potential adverse ramifications of this position for the three captured American soldiers, U.S. leadership grudgingly acknowledged that its participation in Serbia and Kosovo amounted to international armed conflict...but not "war."[20]

Therefore, despite an obvious state of international armed conflict, the United States initially resisted acknowledging itself as a belligerent State for purely political and diplomatic purposes. The irony of this situation is best illustrated by the following quotation:

> Despite what you hear from the daily Pentagon briefers, the United States is engaged in an air war in Yugoslavia. While there seems to be no shortage of euphemisms for the word "war" inside the beltway, there is a real shortage over Yugoslavia: precision-guided munitions (PGMs).[21]

From a legal perspective, however, regardless of whether an armed conflict is recognized as *war* (remember "Operation Desert Storm") "when the national level authorities conclude that a conflict is an *international armed conflict* [emphasis added]... [t]he entire body of the law of war applies."[22] But, as demonstrated in Kosovo, the difficulty for the Joint Force Commander might first entail obtaining that recognition of belligerency from the NCA to obtain approval for a specific use of force or course of action.

In short, depending on the nature of the operation, the Joint Force Commander might be confronted with a two-fold task: (1) convincing the NCA that a state of international armed conflict should be acknowledged as such, and (2) as necessary, justifying the employment of politically sensitive methods of warfare (such as blockade, visit and search, and maritime exclusion zones) to best enhance naval operations. For example, since the United States only *reluctantly* admitted that it was engaged in international armed conflict with the Serbs (motivated only by its desire to ensure Geneva Convention protections for its captured soldiers), this did not bode well for General Wesley Clark's ability to leverage these viable belligerent rights under international law (regardless of their military potential) during Operation Allied Force.

Thus, the Joint Force Commander must recognize that the willingness of a nation to exercise its belligerent rights under international law (and the degree to which a nation will employ that law) will differ drastically depending on its stated political objectives (e.g., total war versus a limited war situation).

Blockade

By the start of the twentieth century, as States became more dependent on the importation of raw materials to support the war effort, the importance of an effective maritime blockade as a means "to exploit the enemy's Achilles' heel" became readily apparent.[23] During World Wars I and II, both sides recognized the importance of this form of economic warfare. For example, in each of these "totalitarian wars" the belligerents resorted to the use of starvation blockades and war zones (in which the laws of naval warfare were suspended) to achieve victory in these "fight[s] to the death."[24] Today, however, one should ask the question: is a blockade a viable means of warfare for the Joint Force Commander who, most likely, will be confronted with a regional, limited conflict rather than a war for national survival?

As a starting point, the working definition for "blockade" used by the U.S. Navy is:

> a belligerent operation to prevent vessels and/or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation. A belligerent's purpose in establishing a blockade is to deny the enemy the use of enemy and neutral vessels or aircraft to transport personnel and goods to or from enemy territory. While the belligerent right of visit and search is designed to interdict the flow of contraband goods, the belligerent right of blockade is intended to prevent vessels and aircraft, *regardless of their cargo* [emphasis added], from crossing an established and publicized cordon separating the enemy from international waters and/or airspace.[25]

Accordingly, the fact that a blockade seeks to prevent all contact between the enemy and the outside world makes this method of warfare more drastic than that of visit and search.[26] However, regarding the viability of blockade as a maritime interdiction option for today's Joint Force Commander, one should note that the United States employed a blockade in the Korean War, as well as the Vietnam War (both *limited* wars) while minimizing the impact of these operations on the exercise of neutral rights.[27]

Korean War

In the Korean War, the United States (and participating U.N. States) imposed a close-in blockade of the coast of North Korea.[28] This traditional maritime blockade was a return to the classic form of close-in blockade that was disregarded during World Wars I and II (during which the belligerents employed long-distance blockades and war zones of dubious legality). From the Joint Force Commander's perspective, however, the blockade of North Korea, although effective, was operationally *insignificant.* This is true for three reasons: (1) the United Nation's naval forces enjoyed overwhelming and virtually unchallenged maritime superiority, (2) North Korea's principal lines of communication were overland from China and the Soviet Union,[29] and (3) the promulgated coordinates of the blockade line off the Korean peninsula were carefully established to avoid direct confrontation with Chinese and Soviet vessels.[30] Thus, in today's environment of *limited* maritime resources, a Joint Force Commander must consider these three factors (especially the enemy's access to a land border) as being supportive of a significant *counter-argument* to the employment of a blockade or other form of maritime interdiction option.

In addition, from a practical perspective, today's world of modern weapons technology has eliminated the traditional, close-in blockade, patrolled by surface warships (Korean War model) as a viable option for the Joint Force Commander. To paraphrase L.F.E. Goldie on this topic, today's military arsenal would render such a blockade "suicidal."[31]

In fact, even as far back as World War I, the British disregarded international law's requirement of a "close-in blockade" and employed a long-distance blockade (stationing surface ships hundreds of miles off the German coast and effectively blockading the entire North Sea) in order to avoid losses from German submarines and defensive mines.[32] From the German perspective, also contrary to international law, the Germans employed submarines vice surface ships and utilized indiscriminate targeting methods (known as unrestricted submarine warfare) to enforce its blockade of Britain.[33] Thus, as State practice has historically *evolved* to ensure Fleet survivability and mission effectiveness in maritime interdiction operations, the Joint Force Commander must recognize that international law with regard to blockade and contraband remains unsettled even today.

Understanding this, again we must ask, what are the options for today's Joint Force Commander considering employing a blockade during the more likely scenario of a regional, limited war situation, against an adversary capable of employing such devastating weapons and platforms as diesel submarines, mines, supersonic aircraft, and cruise missiles?

First and foremost, despite civil-military tensions that might exist relating to the exercise of such belligerent rights during times of international armed conflict, the need to isolate one's adversary is especially valid today since apparently neutral countries are readily willing to provide war-sustaining products like petroleum and *ready-to-use* weapons systems to known belligerents.[34] From a military operations perspective, the Joint Force Commander *must* contemplate maritime interdiction options to significantly limit his adversary's ability to sustain the war effort and inflict American casualties. Thus, in order to effectuate this invaluable method of economic warfare in a limited war context (and

within the confines of international law) the Joint Force Commander has two options: (1) declare a blockade zone and enforce the blockade with military assets *other than* vulnerable surface ships, and/or (2) use surface warships to enforce a long-distance *type* blockade that is acceptable under international law...(e.g., the belligerent right of visit and search or maritime interception operations).[35]

Vietnam War

For example, the United States mining of nine North Vietnamese ports, including Haiphong, during the Vietnam War is an excellent example of: (1) the political hesitancy to employ blockade as a method of warfare, (2) the actual effectiveness of a blockade, and (3) the use of assets *other than* the surface warship to enforce a blockade zone.

First, despite the virtual free-flow of extensive war sustaining materials into North Vietnam from the Soviet Union, the United States chose not to blockade North Vietnamese ports until 8 May 1972. Because the United States enforcement mechanism for this blockade was not a cordon of warships along the Vietnamese coast, but rather *minefields* capable of indiscriminate attack, the U.S. political leadership was genuinely "concerned with preventing sinkings of ostensibly neutral Soviet merchant vessels to avoid escalation of the conflict."[36]

Once accomplished, however, the mining of North Vietnamese ports undoubtedly constituted an effective blockade. Specifically, Vice Admiral William P. Mack, Commander of the U.S. Navy's Seventh Fleet stated, "What happened was that all that traffic into Vietnam, except across the Chinese border stopped. Within ten days, there was not a missile or a shell being fired at us from the beach. The North Vietnamese ran out of ammunition, just as we always said they would."[37]

In this maritime interdiction operation, however, it must be noted that the United States deviated from the traditional form of blockade in that the "enforcement device" was not a cordon of warships but rather naval mines.[38] Thus, using mines to enforce a blockade is *controversial* because innocent neutral shipping can become the object of indiscriminate attack. Specifically, traditional international

law authorizes belligerents to *capture* neutral merchant ships attempting to run a blockade, not sink them (albeit *except* when a merchant resists capture, and then *only* after removal of crew and papers).[39] However, because the United States provided extensive notice and laid the mines solely within the territorial sea and inland waters of North Vietnam, the operation appeared to satisfy the international law principles of necessity and proportionality.[40] In fact, the deterrent effect of the blockade was so successful that "all shipping ceased with no injury to life or property reported during the operation."[41]

Additionally (although experts differ on the intended purposes of the British total exclusion zone in the Falklands War), the argument can be made that the British total exclusion zone was an effective *blockade* by the British of the Falkland Islands.[42] Thus, after *Conqueror* sank the Argentine cruiser, *General Belgrano*, on 2 May 1982, the enforcement device of the maritime blockade was certainly the British nuclear-powered submarines, "which were now, beyond any doubt, patrolling the waters off the coast of Argentina outside the twelve-mile limit."[43] Therefore, British submarines vice surface warships enforced the British maritime blockade of the Falkland Islands that "was a success, a total success."[44]

As a precautionary note, however, the Joint Force Commander must remember that submarines are limited in their ability to *capture* (vice sink) neutral merchants. Therefore, although the presence of submarines will provide the JFC with a certain degree of deterrent effect (e.g., the Falklands War), this limited ability to *capture* neutral merchants reduces the submarine's *practical* effectiveness as a blockade enforcement device, especially since the 1936 London Submarine Protocol (to which the U.S. is a party) makes the practice of unrestricted submarine warfare unlawful.

Visit and Search

In contrast to blockade, a belligerent State conducting visit and search *permits* neutral nations to engage in maritime commerce with the enemy, with the exception of contraband goods.[45] The term "contraband" is defined as "those goods or materials, such as ammunition, that are directly related to

warfighting, or that are war-sustaining, such as oil, electronic components, and industrial raw materials."[46] In practice, belligerent States will generally publish a list that expressly delineates what goods constitute contraband prior to conducting visit and search operations.[47]

As discussed above, surface warships cannot effectively enforce a close-in blockade because of modern weapons technology. Accordingly, in order to effectively utilize surface warships in the maritime interdiction role of *visit and search*, such warships should be stationed far off the enemy's coast. Thus, in a limited war setting, and consistent with the requirements of international law, unlike blockade, a belligerent may exercise its right of visit and search *anywhere* within international waters to stop vessels suspected of carrying contraband to the enemy.[48]

The working definition for "visit and search" used by the U.S. Navy is:

> the means by which a belligerent warship or belligerent military aircraft may determine the true character (enemy or neutral) of merchant ships encountered outside neutral territory, the nature (contraband or exempt "free goods") of their cargo, the manner (innocent or hostile) of their employment, and other facts bearing on their relation to the armed conflict.[49]

Thus, as should be expected, the U.S. Navy does not consider the submarine as a viable platform for conducting visit and search since this method of employment would "deprive the submarine of its stealth advantage and render it vulnerable to attack."[50] More succinctly stated, visit and search would render "a shark a sitting duck."[51]

Additionally, if the *enemy* possesses a viable submarine threat (which is more likely today with the recent proliferation of this platform), surface warships conducting visit and search, even far off the enemy's coast, must take precautions. Specifically, in such a situation, surface warships should escort the neutral vessel, or better yet, pass the neutral vessel off to an aircraft to escort her "to the nearest place (outside neutral territory) where the visit and search may be conveniently and safely conducted."[52]

In recent State practice, visit and search was conducted extensively during the Iran - Iraq Tanker War. In fact, from 1985 to 1988, Iran conducted visit and search of as many as fifteen to twenty vessels a day.[53] And despite Iran's propensity for hostage taking, the United States and other neutral States generally acquiesced to Iran's exercise of the belligerent right of visit and search.[54] As a legal matter (which may be relevant to our continued discussion of Kosovo below), Great Britain refused to acknowledge the traditional notion of visit and search as a belligerent right surviving the adoption of the U.N. Charter. Specifically, Great Britain accepted the de facto *practice* of "visit and search" as rightfully existing only under Article 51 of the U.N. Charter stating:

> Iran, actively engaged in an armed conflict, is entitled in exercise of its inherent right of self-defense to stop and search a foreign merchant ship on the high seas, if there is a reasonable ground for suspecting that the ship is taking arms to the other side for use in the conflict.[55]

Although the Iranian regular Navy generally conducted visit and search consistent with the requirements of international law (including visit and search of one American-flag merchant), "the United States chose to convoy its ships, including the eleven reflagged Kuwaiti tankers, through the strait and gulf."[56] This practice was motivated by U.S. observance of Iranian and Iraqi indiscriminate targeting methods throughout the Persian-Arabian Gulf, as well as its desire to avoid further incidents of visit and search, with their accompanying risk of repeating the Teheran Embassy hostage incident.[57] Thus, while recognizing Iran's belligerent right of visit and search under international law, the United States exercised its own neutral right of *convoy* "under which belligerents cannot visit and search convoyed ships and are to be satisfied with the declaration of the commander of the convoy that no cargo which can be considered contraband is onboard the convoyed ships."[58] [59]

Maritime Interception Operations (MIO)

On 2 August 1990, Iraqi forces invaded and occupied Kuwait. Exercising individual and collective self-defense pursuant to Article 51 of the U.N. Charter, the United States initiated maritime control

measures against Iraq. Specifically, on 16 August 1990 (nine days *prior* to the United Nations Security Council Resolution), the Department of Defense announced that the President had authorized: "U.S. Forces to participate in a multinational effort that will intercept ships carrying products and commodities that are bound to and from Iraq and Kuwait."[60] On 25 August 1990, under the authority of Article 42 of the U.N. Charter, Security Council Resolution 665 called upon coalition forces "to use such measures commensurate to the specific circumstances as may be necessary...to halt all inward and outward shipping."[61]

While U.N. Resolution 665 has been referred to as the "blockade" resolution, the characteristics of the actual interception operation do not meet the traditional test for a blockade and actually are less intrusive than even that of "visit and search."[62] Specifically, Joint Pub 3-07 defines maritime interception operations as "operations which employ coercive measures to interdict the movement of certain types of designated items into or out of a nation or specified area."[63] Accordingly, a brief discussion of the Persian-Arabian Gulf Maritime Interception Operation (MIO) will demonstrate the efforts that were taken by coalition forces to effectively interdict maritime commerce to Iraq and occupied Kuwait while securing neutral shipping rights in a limited war context.

First, the objective of the interception operation was not to blockade the enemy's coast to prevent the ingress and egress of all shipping, but rather to focus on prohibitive *cargo* (similar to the contraband concept of visit and search).[64] Thus, humanitarian exemptions for medical supplies and food supplies were expressly recognized.[65] In addition, unlike a blockade (and consistent with the concept of visit and search) broad areas of international waters were affected by the interception operation, to include: the Persian-Arabian Gulf (south of latitude 27N), the strait of Hormuz, strait of Tiran, the Gulf of Oman, and the Red Sea (north of latitude 22N).[66] As a result, to offset the MIO's wide area of coverage, there was no long-distance blockade or interference with legitimate shipping to neutral ports.[67]

In addition, the classic enforcement mechanisms for blockade and visit and search (capture and prize) were not used.[68] In fact, "avenues of withdrawal," intended to diffuse potential conflict during the interception operation were employed.[69] Specifically, vessels intercepted while departing Iraq with prohibited cargo were permitted to return to port, and vessels attempting to reach Aqaba, Kuwait, or Iraq were offered the option of diverting without being boarded, or even after boarding and discovery of prohibited cargo, were permitted to return to their ports of origin or select a non-prohibited port to offload.[70]

Thus, in this limited war context, in which public opinion and adherence to international law was crucial, the blending of blockade and visit and search concepts (albeit a much less intrusive method of warfare than required by international law) proved successful. Accordingly, although the Security Council possesses broad enforcement powers under Article 42 of the U.N. Charter, this Persian-Arabian Gulf Maritime Interception Operation (MIO) will most likely serve as the model for future United Nations' maritime interdiction operations employed in limited war settings.

Operation Allied Force

Before leaving the area of maritime interdiction (whether in the form of blockade, visit and search or MIO), one must wonder (beyond that already discussed) why such an effort was not undertaken during Operation Allied Force? In reply, and as a *counter-argument* to the military effectiveness of these maritime interdiction options, the Joint Force Commander must consider the greater political ramifications of employing these internationally *sensitive* methods of warfare.

In a recent *Proceedings* article, Lieutenant Colonel P. C. Tissue, USMC reflected upon U.S. Marine Corps F/A-18D successes in Operation Allied Force. Specifically, Lieutenant Colonel Tissue stated, "We flew… missions throughout Serbia against...oil refineries with great success...an oil refinery that covers four square miles is not too tough a target…."[71] This being said, rather than destroy an oil refinery outside Novi Sad, Yugoslavia in a limited conflict in which U.S. forces will remain

indefinitely ensuring regional stability, why didn't NATO forces just prevent the shipment of this oil, as war-sustaining *contraband*, from ever reaching the refineries of Slobodan Milosevic? The answer to this very reasonable question requires a three-part analysis.

First, as previously discussed, despite the obvious trappings of armed conflict in Kosovo, all involved NATO nations, including the United States, did not want to publicly recognize Operation Allied Force as an international armed conflict (let alone a war). As a result, there was a general reluctance on the part of the participating NATO States to execute any form of blockade and/or visit and search operation which, under international law, are rights possessed only by *belligerent* States.

Second, even if participating NATO States were willing to recognize the Kosovo operation as an international armed conflict, Great Britain (as previously discussed relating to the Iran – Iraq Tanker War) refuses to recognize "visit and search" as a viable belligerent right existing independent of Article 51 of the U.N. Charter. And by bombing Belgrade without a supporting U.N. Security Council Resolution, NATO arguably violated the fundamental principle of national sovereignty that comprises the core of that same United Nations Charter.[72] Thus, as a practical matter, Great Britain (at a minimum) would be hesitant to create a situation by which it would be required to make the tenuous argument that the maritime interdiction of oil to Yugoslavia was necessary as a matter of national self-defense under Article 51 of the U.N. Charter in a *self-initiated* armed conflict that *itself* was arguably being executed in contravention of that same U.N. Charter.

Third, all participating NATO nations understood that Russia, China, and India vehemently opposed their participation in the Kosovo conflict.[73] Thus, if the oil refineries really were such easy direct-action targets as published by Lieutenant Colonel Tissue, then the question becomes, why should NATO risk escalation of this limited, regional conflict by attempting to conduct visit and search operations onboard Russian, Chinese, or Indian- flag vessels? Similarly, given such a tenuous

situation, why should NATO unnecessarily generate the risks inherent in confronting a convoy of Russian-flag merchant oil tankers escorted by a Russian warship?

In contemplating this critical issue, at least for Great Britain and France, precedent existed that visit and search operations do entail significant risks of increased tensions. Specifically, during the Rhodesian dispute, the U.N. Security Council authorized Great Britain to use force as necessary to prevent vessels from carrying oil to the Rhodesian terminal at Umtali via Beira.[74] On 19 December 1967, despite a warning shot by the Royal Navy frigate *Minerva*, the French Tanker *Artois* refused to agree to visit and search.[75] In this case, escalation of the conflict was averted by the immediate actions of the British and French governments.

Concerning Operation Allied Force, however, NATO leaders recognized the risks inherent in an opposed visit and search operation attempted by NATO warships on a Russian-flag neutral tanker. Specifically, taking such action in this hotly disputed (and not U.N. sanctioned) limited conflict posed an unnecessary risk to NATO States of expanding the conflict or, at a minimum, increasing international tensions relating to the conflict. Therefore, while maritime interdiction options should always be considered by the Joint Force Commander, *sometimes* the military benefits of employing such options will not outweigh the political risks … as was the case in Operation Allied Force.

Maritime Exclusion Zones

In the twentieth century, maritime exclusion zones have been utilized during periods of international armed conflict for several divergent purposes, with varying degrees of impingement on neutral shipping rights, and correspondingly, with varying degrees of legality under international law.[76]

While the declaration of maritime exclusion zones during times of international armed conflict has become a relatively common practice amongst belligerent States, this belligerent practice does not generally exist in peacetime. For example, in violation of customary international law, North Korea presently claims a fifty nautical mile maritime exclusion zone drawn seaward in the Sea of Japan from

its proclaimed baseline in which foreign military ships are prohibited and foreign civilian vessels must receive permission prior to entry.[77] In effect, North Korea has unlawfully claimed *sovereignty* over this portion of international waters.[78]

Despite excessive maritime claims such as North Korea's proclaimed *peacetime* maritime exclusion zone, generally speaking, there are five types of maritime exclusion/warning zones that a Joint Force Commander should consider in planning naval operations during times of international armed conflict: (1) an offensive-oriented maritime exclusion zone, (2) a defensive-oriented maritime exclusion zone, (3) *cordon sanitaire*, (4) a maritime warning zone, and (5) an exclusion zone for the immediate area of naval operations.

Offensive Maritime Exclusion Zones

As a basic premise, "States declare maritime exclusion zones *offensively* [emphasis added] when they seek to interdict shipping into a target State or port" in order to deprive the enemy of the means to wage war.[79] For example, during both world wars, offensive "war zones" were declared by belligerents of both sides (rationalized as acts of reprisal) wherein enemy shipping, as well as neutral vessels were subject to indiscriminate targeting and destruction without visit and search or immediate warning.[80] The legality of this method of warfare was "put on trial" at Nuremburg at which the International Military Tribunal convicted Admiral Doenitz for ordering the indiscriminate practice of unrestricted submarine warfare within such a war zone.[81] It should be noted, however, that even though Admiral Doenitz was found guilty of violating international law in this regard, the Tribunal refused to impose a sentence for this war crime since similar practices were also conducted by members of the Grand Alliance. In fact, Fleet Admiral Chester W. Nimitz, former Commander-in-Chief, U.S. Pacific Fleet, testified by affidavit on behalf of Admiral Doenitz that the United States Navy similarly conducted unrestricted submarine warfare (as an act of reprisal) against Japan.[82]

The take away lesson from both world wars (and their repeated violations of the 1936 London Submarine Protocol) for the Joint Force Commander is this: "the practices in a war fought on a global scale and with national survival among the objectives are not necessarily appropriate precedents for the laws of naval warfare in a limited war."[83] In fact, Professor Levie maintains that "in any World War III, belligerents will again find reasons why the 1936 London Submarine Protocol should not be applied."[84]

The key lesson for the Joint Force Commander to remember is two-fold: (1) when engaged in a limited war, offensive war zones should not be considered as a viable option, and (2) if the United States is a neutral party to any conflict in which offensive war zones are contemplated, the United States (as the world's premier maritime Power) should apply leverage to ensure that belligerents comply with law of war principles.

In post world war history, during the Iran - Iraq Tanker War, the world saw two States again resort to the use of offensive maritime exclusion zones and indiscriminate targeting methods. Although the Iran - Iraq War was not fought on a global scale, it was a *total* war from the perspective of both belligerents, limited in scope only by the adversaries' capabilities to wage war.[85] Specifically, since both Iran and Iraq recognized that each side financed its war effort through the sale of oil, interdiction of such oil exports became a *decisive* factor in the war.[86] Thus, on 12 August 1982, Iraq announced its Gulf Maritime Exclusion Zone (GMEZ), which was an offensive-oriented maritime exclusion zone focused on the waters around Kharg Island from where "Iran was exporting up to 2 million barrels of petroleum a day to finance the war effort."[87] As a result, Iraqi aircraft *indiscriminately* attacked all tankers (belligerent and neutral) found within the vicinity of the Kharg Island exclusion zone.[88]

Iran responded to Iraq's indiscriminate attacks around Kharg Island by declaring its own offensive-oriented maritime exclusion zones and indiscriminately attacking all shipping (belligerent and neutral) off the shores of Kuwait and the United Arab Emirates. Strategically, Iran based these offensive

exclusion zones on the theory that imports to and exports from these Arab gulf ports indirectly supported Iraq's war effort.[89] Thus, throughout the eight years of the Gulf War, in which both States utilized "maritime free-fire zones"[90] and indiscriminate targeting practices, in one of the world's busiest waterways:

> Iran and Iraq attacked more than 400 commercial vessels, almost all of which were neutral State flagships. Over 200 merchant seamen lost their lives because of these attacks. In material terms, the attacks resulted in excess of 40 million dead weight tons of damaged shipping. Thirty-one of the attacked merchants were sunk, and another 50 declared total losses.[91]

Thus, as a teaching tool for the Joint Force Commander, the practical effect of Iran and Iraq displaying blatant disregard for international law (especially in such a strategically critical area of the world) was that the international community became outraged, and more pragmatically, the major world Powers took a direct interest in the conflict (bringing with them the risk of unwanted escalation). For example, by 1988, in addition to United States warships, more than forty warships of NATO nations were in the Persian-Arabian Gulf for escort and mine suppression duty.[92]

In World War I, the Germans understood the risk of indiscriminately attacking neutral merchant shipping, and realized its calculated risk of unrestricted submarine warfare by the entry of the United States into the war. Similarly, by its disregard for international law, Iran provoked military confrontation with the United States and risked escalation of its war with Iraq by tempting the United States to forego its neutral status and enter the war as a belligerent. Although the United States remained neutral during the war, the United States did confront Iran militarily on a number of occasions during this period by exercising its inherent right of self defense under Article 51 of the U.N. Charter. For example, (a) on 21 September 1987, a United States helicopter fired on and immobilized the Iranian LST, *Iran Ajr*, caught laying mines in international shipping lanes, (b) in October, 1987, the United States responded to an Iranian Silkworm missile attack on the U.S.- reflagged tanker, *S.S. Sea Isle City* (located in Kuwaiti waters), by destroying Iranian offshore oil rigs used as bases for Iranian

gunboats, and (c) in April, 1988, United States naval units destroyed Iranian offshore oil rigs and naval units in response to *USS Samuel B. Roberts* striking a mine in international waters.[93]

Moreover, although Iraq's *Exocet* missile attack on *USS Stark* proved to be unintended, this tragic incident demonstrated the danger of a belligerent State employing haphazard targeting methods during international armed conflict (e.g., risk of broadening the conflict or, at a minimum, losing favor with a neutral Power sympathetic to one's cause).

In short, the experience of the Iran - Iraq Tanker War clearly supports the proposition that the United States must not tolerate the offensive use of maritime exclusion zones and indiscriminate targeting methods that unreasonably burden the neutral right of freedom of navigation in international waters.[94]

Defensive Maritime Exclusion Zones

On 7 April 1982, the British Government announced that under Article 51 of the United Nations Charter, a 200 mile maritime exclusion zone (MEZ) would be established around the Falkland Islands, to become effective on 12 April 1982.[95] The British declared that any Argentine ship or aircraft found within this exclusion zone would be treated as hostile.[96] It should be noted that, at this time, no reference was made to neutral vessels found within the declared MEZ.

At this point (even prior to the arrival of the British battle group into the MEZ), this declaration of a defensive-oriented maritime exclusion zone served the British favorably in four significant ways: (1) it shifted the responsibility for crisis escalation to Argentina,[97] (2) as a "ruse of war," it reinforced the British deception and the Argentines' false belief that the British nuclear-powered submarine, *HMS Superb*, was already on station in the vicinity of the Falkland Islands,[98] (3) similar to the United States use of the term "quarantine" during the Cuban Missile Crisis, it avoided reference to the belligerent term "blockade" during a time in which international armed conflict was hoped to be avoided,[99] and (4)

it established "an arena, or a ring"[100] in which this conflict (should it come to pass) would be geographically limited, thereby reducing the risk of conflict escalation.

With the arrival of the British battle group into the maritime exclusion zone, on 30 April 1982, the British government declared this same area to be a total exclusion zone (TEZ) from which all non-British ships and aircraft were excluded.[101] Most significantly, "any military or civilian ships or aircraft found within the zone without due authority from the Ministry of Defense in London were to be regarded as hostile and liable to attack by British forces."[102] Later, on 7 May 1982, following the 4 May Argentine *Exocet* attack on the British destroyer, *HMS Sheffield*, the total exclusion zone was extended by Great Britain to twelve miles off the coast of Argentina.[103]

At this point, with a working knowledge of applicable international law, and with the British battle group's arrival in the area of operations, a Joint Force Commander should critically analyze: (1) the benefits and drawbacks of declaring a maritime exclusion zone, and (2) the benefits and drawbacks of Great Britain's declaration of a total exclusion zone vice the maritime exclusion zone that had been in effect since 12 April 1982.

First, at the operational level, the most significant benefit provided by the maritime exclusion zone (and perhaps to a greater extent, the total exclusion zone) concerns the operational factors of space and time.[104] Specifically, in a high threat environment involving modern weapons technology, *self-defense* is maximized by increasing reaction time and keeping the enemy and others at a safe distance.[105]

Second, for targeting purposes, with reduced aviation and maritime traffic in the exclusion zone, the operational picture becomes much less confusing for the naval commander. As a result, the possibility of erroneous targeting, incidental injury and collateral damage is reduced. For example (by contrast), in a *heavily* populated environment, the United States *Harpoon* missile, with a range of 60 nautical miles (and lacking in-flight target differentiation) might be rendered useless to an operational commander because of its unacceptable risk of unintended target destruction.[106]

Third, the operational commander's presumption that any uninvited foreign aircraft and shipping found within the exclusion zone is of *hostile* character contributes to the concept of self-defense by reducing the calculus required for target identification; but, as will be discussed below, this is a mixed blessing.[107]

To offset these stated benefits, the Joint Force Commander must also consider the drawbacks associated with an exclusion zone, and hopefully determine an appropriate response for the given maritime situation. For example, in the Falklands War, the two most glaring drawbacks of the British declared exclusion zone (applicable to both the maritime exclusion zone and the total exclusion zone) were: (1) its impact on the British rules of engagement, and (2) the unnecessary controversy that it created when *HMS Conqueror* sank the Argentine cruiser, *General Belgrano*, outside of the total exclusion zone.

First, Rear Admiral Woodward (British battle group commander) was displeased with his initial rules of engagement (ROE) for the Falklands War. Specifically, prior to the British battle group entering the maritime exclusion zone, British ROE prohibited attack on any contact, unless in self-defense.[108] As a result, at least initially, Rear Admiral Woodward was not permitted to engage an Argentine reconnaissance aircraft ("Burglar"), which was reporting the British battle group's position and composition back to Argentine intelligence.[109] Beyond this, even after the British battle group arrived inside the total exclusion zone (TEZ), Rear Admiral Woodward was handcuffed by another restrictive form of ROE that prohibited him from engaging any contact that was located *outside* of the TEZ.[110]

To make matters worse, on 2 May 1982, Rear Admiral Woodward's battle group was facing a classic "pincer" situation, with the Argentine aircraft carrier, *Veintecinco de Mayo* (with her A4 fighter-bombers and possible *Exocet*-armed Super Etendards) and two destroyer escorts to the north and the cruiser, *General Belgrano*, and her two escorting destroyers (*Exocet*-equipped shooters) to the

south.[111] To defend against this anticipated pincer attack, Rear Admiral Woodward envisioned that *HMS Spartan* (nuclear-powered submarine) would trail and sink the aircraft carrier to the north while *HMS Conqueror* (nuclear-powered submarine) would do the same to *General Belgrano* to the south. Unfortunately, *HMS Spartan* (operationally controlled from the United Kingdom) was not permitted to cross her assigned patrol box, thereby forcing termination of her pursuit of the carrier.

HMS Conqueror, meanwhile, was silently stalking *Belgrano* to the south, and capable of sinking her at any time...*except*, *Belgrano* was located outside of the TEZ and the existing ROE did not authorize such an engagement. Thus, survival of the British battle group was jeopardized because British ROE was directly (and unnecessarily) linked to the physical location of ships and aircraft to the declared parameters of the total exclusion zone. Once this flawed ROE was changed, however, *Conqueror* slammed two torpedoes into the port side of *General Belgrano*, sending the World War II veteran cruiser (and many of her crew) to the bottom.[112]

Second, Great Britain has been sharply criticized for sinking the *Belgrano* while the cruiser was located *outside* the geographical limits of Britain's own, self-imposed, total exclusion zone.[113] This criticism is unjustified for three reasons: (1) at the time of the sinking, Argentine forces were occupying the Falkland Islands and British forces were seeking to forcibly terminate such possession,[114] (2) on the preceding day, Argentine aircraft openly attacked the British battle group, and (3) all British declarations of exclusion zone parameters reiterated that such measures were being exercised without prejudice to Great Britain's inherent right of self-defense under Article 51 of the U.N. Charter, "thereby preserving its rights to take defensive measures beyond the TEZ."[115] In short, although *Conqueror's* sinking of *Belgrano* outside of the TEZ was well-within international law standards, a Joint Force Commander can avoid any such international backlash by providing express warning to an adversary that the sea and airspace located outside of a declared MEZ/TEZ will not serve as sanctuaries for belligerent aircraft and shipping during times of international armed conflict.

In addition, while Great Britain's transformation of the maritime exclusion zone (MEZ) into a total exclusion zone (TEZ) provided *some* added operational benefit to the battle group commander (e.g., perhaps some reduction of neutral traffic in the TEZ because of the threat of attack), such action also greatly increased the risks of indiscriminate targeting and conflict escalation for the British naval forces. Specifically, and as previously discussed, in its declaration of the TEZ, Great Britain threatened the international community that all foreign aircraft and shipping found within the TEZ without British Defense Ministry permission would be regarded as *hostile* and liable to attack. Ironically, while the British instituted the MEZ and TEZ under the auspices of Article 51 of the U.N. Charter, such language is reminiscent of the coercive declarations that promulgated the offensive "war zones" of World War I and World War II. Thus, despite Britain's well-publicized notice to the international community, "the British would have violated the principle of discrimination had they carried out unrestrained attacks of any vessel [found] in the [total] exclusion zone."[116] This being said, however, it should be stressed that the offensive-oriented, free-fire zone concept demonstrated in both world wars (and later in the Iran – Iraq Tanker War) was never initiated nor intended by Great Britain in this limited war setting.[117]

Regardless, a Joint Force Commander must realize the danger of declaring such a total exclusion zone by which he creates for the enforcing naval commander a presumption (not to mention an accompanying mindset) that any foreign aircraft or vessel found within that zone without permission is *hostile*. Specifically, the Joint Force Commander must realize that, under international law, "the same body of law applies both inside and outside of the zone."[118] Therefore, the benefit of deterring *perhaps* a greater number of neutral merchants from traversing a total exclusion zone (by utilizing the threat of attack) may not be worth the comparative risk of instilling a "presumed hostile mindset" into the psyche of the naval commander enforcing such a zone.

Beyond this, the Joint Force Commander must also assess the possibility that a neutral vessel may indeed enter a declared total exclusion zone despite the belligerent's coercive threat of attack. In the

event of such an intrusion, coupled with the belligerent's decision not to respond by *attack* (e.g., compliance with international law), the belligerent's willingness to enforce its total exclusion zone as promulgated will be placed in doubt. Therefore, the belligerent State's international credibility, as well as the deterrent effectiveness of its total exclusion zone will be reduced. In the alternative, however, should the belligerent State decide to attack the neutral vessel (as advertised), such action would not only violate international law, but significantly risk escalation of the conflict to now include, at least, the neutral State.

Understanding this, the Joint Force Commander must recognize that he can obtain virtually the same benefits attributed to a maritime exclusion zone (without the accompanying risks) simply by issuing a *warning* of danger (not a threat of attack) to the international community via the Notice to Mariners system (NOTMARs) and the Notice to Airmen system (NOTAMs).[119] For example, as long as a declared maritime *warning zone* is reasonably-sized, well-publicized, and sufficiently-enforced with an adequate ratio of force to space and time,[120] neutral shipping (and aircraft) will consciously and intentionally avoid the warning area without the need for threatened attack. As a matter of pure business sense, a neutral merchant would generally chart an alternate course rather than unnecessarily hazard his vessel (contributory negligence) and pay increased marine cargo insurance rates by transiting such a hazardous maritime zone.[121]

This being said, however, because of the significant danger posed by the post- Cold War proliferation of submarines, in conjunction with a maritime *warning zone* established for the surface and airspace surrounding the battle group (or promulgated maritime parameters), the Joint Force Commander should also consider declaring a *subsurface exclusion zone*. Specifically, within the declared (and well-publicized) defensive-oriented *subsurface* MEZ, any non-friendly submarine would be presumed hostile and subject to immediate attack by naval forces.[122] And while this proposed subsurface MEZ carries with it some of the risks described above concerning maritime exclusion

zones, these risks are lessened since this exclusion zone is *limited* to the subsurface. Furthermore, considering the grave danger posed by a submerged submarine in the immediate vicinity of a battle group during times of international armed conflict, assumption of these risks is an acceptable trade-off for ensuring survival of the U.S. naval force.

Returning now to the Falklands War, although the British never violated international law while enforcing its total exclusion zone, the Soviet Union (at the height of the Cold War) did assert that the British total exclusion zone *itself* was illegal under the Geneva Convention on the High Seas.[123] Specifically, the Soviet Union claimed that the total exclusion zone "arbitrarily proclaimed vast expanses of the high seas closed to ships and craft of other countries."[124] Furthermore, while the Soviet Union chose not to directly challenge the legality of the British total exclusion zone at sea, the risk of unwanted escalation of a limited, regional conflict by unnecessarily declaring such a *total* exclusion zone should never be discounted.

In short, the remote location of the Falkland Islands, the reasonable size of the declared MEZ/TEZ, the minimal amount of neutral commercial traffic in these waters, and the limited nature of the armed conflict allowed the British to get away with employing such a "total exclusion zone" without international incident.

Lastly, before moving on to discuss the concept of *cordon sanitaire*, one remaining, and ironic disadvantage of employing a defensive-oriented maritime exclusion zone was illustrated by the practical ramifications of the Iranian maritime defense zone during the Iran - Iraq Tanker War. Specifically, as soon as Iraq invaded Iran on 22 September 1980, Iran announced a defensive maritime exclusion zone extending up to forty miles off its coasts.[125] Although this maritime exclusion zone was claimed in one of the world's busiest waterways, and Iran provided no safe passage routes for neutral-flag tankers destined for non-Iranian ports, some experts have asserted that this measure, taken

in self-defense, was a reasonable impingement on freedom of navigation rights since neutral vessels (albeit subject to Iranian attack) could still transit the Gulf south of the declared exclusion zone.[126]

In practice, however, the Iranian defensive maritime exclusion zone proved to be counter-productive.[127] Specifically, once the "Tanker War" aspect of the war began, all vessels operating within Iran's maritime defense zone were considered prime targets by the Iraqi pilots eager to attack neutral vessels bound for Iranian ports.[128] In fact, from the perspective of an Iraqi combat pilot, the Iranian maritime defense zone filtered out truly innocent shipping and created the presumption that vessels located within the exclusion zone were dealing with Iran, and therefore, subject to attack.[129] Thus, although Iran declared this maritime exclusion zone for a defensive purpose, it actually isolated neutral merchant shipping bound for Iranian ports (since genuine neutrals avoided the exclusion zone) and simplified Iraqi targeting methods.[130]

Cordon Sanitaire

In the late 1960's, Vice Admiral Kidd, Commander U.S. Sixth Fleet, envisioned the development of a maritime *cordon sanitaire* as a means to eliminate the Soviet tattletale (AGI) threat in the Mediterranean.[131] Specifically, during times of increased tensions (in *anticipation* of international armed conflict), a moving *cordon sanitaire* would be declared around each U.S. naval formation. This *cordon sanitaire* was defined as "a circle centered on the formation in which the presence of units of a potential enemy would be considered a hostile act, making such units subject to military action."[132] Thus, as the Cold War tensions rose to such a threshold where war became probable, the Soviet tattletale would be prevented from obtaining effective over-the-horizon targeting information of the battle group for relay to the Soviet warships and weapon systems.[133] In short, the *cordon sanitaire* would provide the naval commander with increased factors of time and space, thereby preventing enemy targeting while increasing reaction time, as well as the survivability of the battle group.[134]

However, while this concept appeared attractive in theory, it was never instituted in practice for three main reasons. First, as discussed above, the concept of declaring a contact hostile upon entering a circle drawn in international waters entailed too great a risk of initiating war with the Soviet Union (e.g., Soviet AGI enters *cordon sanitaire* during a period of high tensions, but not hostilities; U.S. is faced with the dilemma of suffering an embarrassing loss of credibility or initiating World War III).[135] In fact, during the war games observed at the Naval War College's Strategic Studies Group, "the imposition of a *cordon sanitaire* seemed to precipitate rather than delay hostilities."[136] Second, if the United States were to employ this controversial international law concept during peacetime (albeit increased tensions), the United States would be required to forebear the ramifications of *reciprocity* on the part of the international community (specifically, the Soviet Union).[137] And third, the extensive defensive area that would be necessary to prevent own-force identification and targeting by the Soviet tattletale would unduly interfere with the principle of freedom of the high seas in congested areas such as the Mediterranean Sea and the Persian-Arabian Gulf.[138]

Maritime Warning Zones

As previously discussed relating to the Falklands War, maritime *warning* zones serve only to *warn* the international community of areas that are hazardous to navigation and overflight while maritime *exclusion* zones actually *threaten* the use of force against any ship or aircraft entering such a zone. Thus, while maritime warning zones are intended to *discourage* transit through the hazardous area, such warning zones do not threaten the intentional targeting of foreign ships or aircraft that may enter the zone (e.g., by declaring such contacts hostile).[139] However, as demonstrated by the warning zones established by the United States during the Iran – Iraq Tanker War, as well as the 1986 U.S. freedom of navigation operation in the Gulf of Sidra, the promulgation of these warning zones usually stress the fact that "units closing naval forces without identifying themselves or whose intentions are unclear to such forces may be held at risk by United States *defensive measures* [emphasis added]."[140]

Thus, as mentioned above, the United States did effectively employ a maritime warning zone during the Iran – Iraq Tanker War. Although such a zone was of questionable legality at the time (remember, U.S. was a non-belligerent),[141] the United States, recognizing an immediate and viable threat to its warships and escorted U.S.-flag tankers, declared a five-nautical mile *protective bubble* around its operations as "a minimum distance of separation between U.S. naval vessels and approaching craft---to guard against the approach of hostile forces."[142]

And while the Joint Force Commander should consider this innovation to be generally effective and generally accepted by today's international community, he should note that, at the time, the Soviet Union protested the U.S. warning zone as a breach of international law, stating that the United States actions in the Gulf were "creating a grave threat to peace and international security," and warned of "possible dangerous consequences."[143] Additionally, in the aftermath of the Iranian Airbus shoot-down by *USS Vincennes* of 3 July 1988, a Joint Force Commander must consider the impact that this *warning zone* concept will have on his operational commanders' Standing Rules of Engagement (SROE) calculus of hostile act and demonstrated hostile intent. Specifically, a Joint Force Commander must guard against the "forward leaning" operational commander who might view his *protective bubble* (albeit only a warning zone) to be semi-inviolate, regardless of its moving nature "in a populous and geographically restricted area."[144]

Besides employing a five-nautical mile maritime warning zone for Persian-Arabian Gulf naval operations during the Iran – Iraq War, the United States effectively employed this same warning zone concept in its *peacetime* freedom of navigation challenge to Libya in March of 1986. Specifically, "by the end of March, 1986, three aircraft carriers, the *Coral Sea*, the *Saratoga*, and the *America*, and their battle groups were operating in the Mediterranean, and the Pentagon announced plans for naval air operations over the Gulf of Sidra."[145]

As part of the U.S. Navy's preparations for crossing Colonel Muammar el-Qaddafi's "line of death," it declared a *protective bubble* around its naval operations which, in effect (albeit still requiring hostile act and/or demonstrated hostile intent) established a virtual line of death of its own.[146] Thus, similar to Great Britain's MEZ of 7 April 1982, the United States established a "trip wire" that "shift[ed] the onus for crises/conflict escalation to the adversary"[147] prior to its naval forces entering the Gulf of Sidra in March of 1986.

Immediate Area of Naval Operations

The last topic that will be discussed concerns the right of a belligerent to control the immediate area of naval operations. Unfortunately, this area of international law does not possess, to my knowledge, any historical examples for reference by the Joint Force Commander. Thus, the following pertinent sections from *The Commander's Handbook on the Law of Naval Operations* (NWP 1-14M) will be provided, along with one *peacetime* example that supports this U.S. position *by analogy only*.

> Section 7.8 BELLIGERENT CONTROL OF THE IMMEDIATE AREA OF NAVAL OPERATIONS
>
> Within the immediate area or vicinity of naval operations, a belligerent may establish special restrictions upon the activities of neutral vessels and aircraft and may prohibit altogether such vessels and aircraft from entering the area. The immediate area or vicinity of naval operations is that area within which hostilities are taking place or belligerent forces are actually operating. A belligerent may not, however, purport to deny access to neutral nations, or to close an international strait to neutral shipping, pursuant to this authority unless another route of similar convenience remains open to neutral traffic.[148]
>
> Section 7.8.1 Belligerent Control of Neutral Communications at Sea.
>
> The commanding officer of a belligerent warship may exercise control over the communication of any neutral merchant vessel or civil aircraft whose presence in the immediate area of naval operations might otherwise endanger or jeopardize those operations. A neutral merchant ship or civil aircraft within that area that fails to conform to a belligerent's directions concerning communications may thereby assume enemy character and risk being fired upon or captured. Legitimate distress communications should be permitted to the extent that the success of the operation is not prejudiced thereby. Any transmission to an opposing belligerent of information concerning military operations or military forces is inconsistent with the neutral duties

> of abstention and impartiality and renders the neutral vessel or aircraft liable to capture or destruction.[149]

In December 1989, the United States Navy declared a Trident missile launch warning zone fifty miles off the Florida coast, which was 30 miles wide and 200 miles long, while also establishing a 5,000 yard radius *launch safety zone* around the *actual* missile launch site (immediate area of naval operations).[150] To protest the launch, *M/V Greenpeace* (flying a Dutch flag) intentionally, and without "due regard" for the ongoing U.S. military operation, entered the missile launch safety zone. In response, the U.S. Navy used reasonable force to "shoulder" the infringing vessel away from the launch area.[151] The U.S. Navy justified its actions in international waters by stating "no Dutch warship was present to assert primary jurisdiction over [*M/V Greenpeace*], and the United States was left with the necessity of defending its maritime rights through self-help"[152] in the immediate area of naval operations.

Conclusion

The purpose of this paper (hopefully attained utilizing historical examples and naval lessons learned) was to instill in the Joint Force Commander a general understanding of international law and a sincere appreciation of how international law can *positively* impact naval operations. Specifically, while recognizing that NCA acknowledgment of belligerency triggers many of these international law rights, hopefully the Joint Force Commander will *now* view blockade, visit and search, maritime interception operations, maritime exclusion zones, *cordon sanitaire*, and maritime warning zones as viable weapons in his arsenal.[153] And while such methods of warfare may not prove *decisive* by themselves (as was the international law weapon of "quarantine" during the Cuban Missile Crisis),[154] they will provide the Joint Force Commander with an asymmetric means to enhance naval operations, reduce American casualties, and help secure "full spectrum dominance" and mission accomplishment in future operations.

NOTES

[1] Michael N. Schmitt, "Bellum Americanum: The U.S. View of Twenty-First Century War and Its Possible Implications for the Law of Armed Conflict," Michael N. Schmitt and Leslie C. Green, eds., *The Law of Armed Conflict: Into the Next Millennium* (International Law Studies v. 71, Newport, RI.: Naval War College press, 1998), 391.

[2] Paul M. Regan, "International Law and the Naval Commander," *United States Naval Institute Proceedings* 107 (August 1991): 56.

[3] Harvard Law Review Association, "Note: Exclusion of Ships From Nonterritorial Weapons Testing Zones," *Harvard Law Review* 99 (March 1986): 1040-1041.

[4] "United Nations Convention on the Law of the Sea," December 10, 1982, U.N. Doc. A/CONF. 62/122 (1982).

[5] Michael N. Schmitt, "Article: Aerial Blockades in Historical, Legal, and Practical Perspective," *United States Air Force Academy Journal of Legal Studies* 2 (1991): 21. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: maritime exclusion zone [21 November 1999]: 6.

[6] Francis J. Russo, "Neutrality at Sea in Transition: State Practice in the Gulf War as Emerging International Customary Law," *Ocean Development and International Law* 19 (1988): 384.

[7] Horace B. Robertson, "Interdiction of Iraqi Maritime Commerce in the 1990-1991 Persian Gulf Conflict," *Ocean Development and International Law* 22 (1992): 291.

[8] Georgios C. Petrochilos, "Article: The Relevance of the Concepts of War and Armed Conflict to the Law of Neutrality," *Vanderbilt Journal of Transnational Law* 31 (May 1998): 575. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: exclusion zone [21 November 1999]: 21.

[9] Lois E. Fielding, "Article: Maritime Interception: Centerpiece of Economic Sanctions in the New World Order," *Louisiana Law Review* 53 (March 1993): 1191. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: exclusion zone [21 November 1999]: 22-48.

[10] James F. Gravelle, "Contemporary International Legal Issues: The Falkland (Malvinas) Islands: An International Law Analysis of the Dispute Between Argentina and Great Britain," *Military Law Review* 107 (Winter 1985): 17.

[11] JMO Department, *Warning Zones*, (Newport, R.I.: Naval War College Press), NWC 1046 (rev. 2), 1-3.

[12] Jon M. Van Dyke, "Military Exclusion and Warning Zones on the High Seas," *Marine Policy* 15 (May 1991): 147-169.

[13] Robertson, 290.

[14] Rudiger Wolfrum, "Military Activities on the High Seas: What Are the Impacts of the U.N. Convention on the Law of the Sea?" Michael N. Schmitt and Leslie C. Green, eds., *The Law of Armed Conflict: Into the Next Millennium* (International Law Studies v. 71, Newport, RI.: Naval War College Press, 1998), 506-507.

[15] UN Charter, Art. 2(4).

[16] Note, exceptions to this belligerency requirement would entail the establishment of a *cordon sanitaire*, as well as a maritime warning zone (*protective bubble* around naval units), as employed by the United States during the Iran - Iraq Tanker War.

[17] Geoffrey S. Corn and Michael L. Smidt, "Article: To Be or Not to Be, That is the Question, Contemporary Military Operations and the Status of Captured Personnel," *Army Lawyer* (June 1999): 1. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: kosovo war [21 December 1999]: 1-2.

[18] Ibid., 29.

[19] Ibid., 2.

[20] Ibid., 4.

[21] J.J. Patterson VI, "Smart Bombs and Linear Thinking Over Yugoslavia," *United States Naval Institute Proceedings* 125 (June 1999): 88.

[22] Corn and Smidt, 12.

[23] Michael G. Fraunces, "Note, the International Law of Blockade: New Guiding Principles in Contemporary State Practice," *Yale Law Journal* 101 (January 1992): 893. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: exclusion zone [21 November 1999]: 10.

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[25] A.R. Thomas and James C. Duncan, eds., *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations* (International Law Studies v. 73, Newport RI.: Naval War College Press, 1999), 390.

[26] Ross Leckow, "The Iran-Iraq Conflict in the Gulf: The Law of War Zones," *International and Comparative Law Quarterly* 37 (1988): 631.

[27] John H. McNeill, "Neutral Rights and Maritime Sanctions: The Effect of Two Gulf Wars," *Virginia Journal of International Law* 31 (1991): 633.

[28] Fielding, 16.

[29] Robertson, 290.

[30] Fielding, 16.

[31] L.F.E. Goldie, "Maritime War Zones and Exclusion Zones," Horace B. Robertson, Jr., ed., *The Law of Naval Operations* (International Law Studies v. 64, Newport, RI.: Naval War College Press, 1991), 161.

[32] Fraunces, 8.

[33] Ibid.

[34] Ibid., 11.

[35] Ibid., 20.

[36] Ibid.

[37] Fielding, 19.

[38] Robertson, 292.

[39] Thomas and Duncan, 396-398.

[40] Robertson, 292.

[41] Fielding, 20.

[42] Howard S. Levie, "The Falklands Crisis and the Laws of War," Michael N. Schmitt and Leslie C. Green, eds., *Levie on the Law of War* (International Law Studies v. 70, Newport, RI.: Naval War College Press, 1998), 203-205.

[43] Ibid., 205.

[44] Ibid., 204.

[45] John Astley III and Michael N. Schmitt, "The Law of the Sea and Naval Operations," *Air Force Law Review* 42 (1997): 142.

[46] Ibid.

[47] Ibid., 143.

[48] Fraunces, 7.

[49] Thomas and Duncan, 387.

[50] Jon L. Jacobson, "The Law of Submarine Warfare Today," Horace B. Robertson, Jr., ed., *The Law of Naval Operations* (International Law Studies v. 64, Newport, RI.: Naval War College Press, 1991), 213.

[51] J.E. Talbott, "Weapons Development, War Planning and Policy: The U.S. Navy and the Submarine, 1917-1941," *Naval War College Review* (May-June 1984): 59.

[52] Thomas and Duncan, 389.

[53] Fielding, 22.

[54] Russo, 385.

[55] Fielding, 22.

[56] Russo, 293.

[57] Ibid.

[58] McNeill, 635.

[59] As an interesting note, Great Britain opposed the "right of convoy" exercised by the United States to prevent physical "visit and search" of U.S.- flag neutral vessels by Iran, acting as a belligerent under Article 51 of the U.N. Charter. Accordingly, during the Iran - Iraq Tanker War, British warships "accompanied" rather than "escorted" its merchant ships and did not prevent Iranian "visit and search" of British-flag vessels (Robertson, 293-294).

[60] Ibid., 294-295.

[61] Ibid., 296.

[62] Ibid., 295-296.

[63] Joint Chiefs of Staff, *Joint Doctrine for Military Operations Other Than War* (Joint Pub 3-07) (Washington, D.C.: June 16, 1995), III-3.

[64] Fielding, 26.

[65] Robertson, 296.

[66] Ibid., 295.

[67] Fielding, 43.

[68] McNeill, 642.

[69] Fielding, 46.

[70] Ibid., 27.

[71] Phillip C. Tissue, "21 Minutes to Belgrade," *United States Naval Institute Proceedings* 125 (September 1999): 39-40.

[72] James Kitfield, "Not-So-Sacred Borders," *National Journal* (20 November 1999).

[73] Ibid.

[74] R.P. Barston and P.W. Birnie, "The Falkland Islands/Islas Malvinas Conflict: A Question of Zones," *Marine Policy* 7 (January 1983): 18-19.

[75] Ibid.

[76] Doswald-Beck, Louise, ed., *The San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge: Cambridge University Press, 1995), 181-183; provides, in relevant part: Section 105: A belligerent cannot be absolved of its duties under international humanitarian law by establishing zones which might adversely affect the legitimate uses of defined areas of the sea. Section 106: Should a belligerent, as an exceptional measure, establish such a zone: (a) the same body of law applies both inside and outside the zone; (b) the extent, location and duration of the zone and the measures imposed shall not exceed what is strictly required by military necessity and the principle of proportionality; (d) due regard shall be given to the rights of neutral States to legitimate uses of the seas; (d) necessary safe passage through the zone for neutral vessels and aircraft shall be provided: (i) where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral State; (ii) in other cases where normal navigation routes are affected, except where military requirements do not permit; *and* (e) the commencement, duration, location and extent of the zone, as well as the restrictions imposed, shall be publicly declared and appropriately notified.

In addition, *The Commander's Handbook on the Law of Naval Operations* (NWP 1-14M, MCWP 5-2.1, COMDTPUB P5800.7)(Thomas and Duncan, 395-396); provides, in relevant part: Section 7.9: Exclusion or war zones established by belligerents in the context of limited warfare that has characterized post-World War II belligerency at sea, have been justified, at least in part, as reasonable, albeit coercive, measures to contain the geographic area of the conflict or to keep neutral shipping at a safe distance from areas of actual or potential hostilities. To the extent that such zones serve to warn neutral vessels and aircraft away from belligerent activities and thereby reduce their exposure to collateral damage and incidental injury, and to the extent that they do not unreasonably interfere with legitimate neutral commerce, they are undoubtedly lawful. However, the establishment of such a zone does not relieve the proclaiming belligerent of the obligation under the law of armed conflict to refrain from attacking vessels and aircraft which do not constitute lawful targets. In short, an otherwise protected platform does not lose that protection by crossing an imaginary line drawn in the ocean by a belligerent.

[77] Jonathan I. Charney, "Article: Central East Asian Maritime Boundaries and the Law of the Sea," *American Journal of International Law* 89 (October 1995): 743.

[78] In response to this excessive maritime claim, North Korea represents an excellent candidate for exercise of the United States Navy's Freedom of Navigation (FON) Program. *See*, Donald R. Rothwell, "Article: Navigational Rights and Freedoms in the Asia Pacific Following Entry Into Force of the Law of the Sea Convention," *Virginia Journal of International Law* 35 (Spring 1995): 625-626. *See also*, Bernard H. Oxman, "International Law and Naval and Air Operations at Sea," Horace B. Robertson, Jr., ed., *The Law of Naval Operations* (International Law Studies v. 64, Newport, RI.: Naval War College Press, 1991), 21-22.

[79] Goldie, "Maritime War Zones & Exclusion Zones," 156.

[80] Jacobson, 215.

[81] Ibid., 211-212.

[82] Talbott, 54.

[83] Jacobson, 221.

[84] Harold S. Levie, "Submarine Warfare: With Emphasis on the 1936 London Protocol," Michael N. Schmitt and Leslie C. Green, eds., *Levie on the Law of War* (International Law Studies v. 70, Newport, RI.: Naval War College Press, 1998), 325-326.

[85] George K. Walker, "State Practice Following World War II, 1945-1990," Richard J. Grunawalt, ed., *Targeting Enemy Merchant Shipping* (International Law Studies v. 65, Newport, RI.: Naval War College Press, 1993): 169.

[86] Leckow, 636.

[87] Walker, 159.

[88] Robertson, 293.

[89] Goldie, "Targeting Enemy Merchant Shipping," 16-17.

[90] McNeill, 634.

[91] Russo, 381.

[92] Walker, 166.

[93] McNeill, 638; Walker, 163-166.

[94] Jacobson, 226.

[95] Gravelle, 17.

[96] Samuel L. Morison, "Falklands (Malvinas) Campaign: A Chronology," *United States Naval Institute Proceedings* 109 (June 1983): 120.

[97] Russo, 392.

[98] Goldie, "Maritime War Zones and Exclusion Zones," 172.

[99] Barston and Birnie, 20.

[100] Goldie, "Targeting Enemy Merchant Shipping," 12.

[101] Jane Gilliland, "Note: Submarines and Targets: Suggestions for New Codified Rules of Submarine Warfare," *Georgetown Law Journal* 73 (February 1985): 975. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: maritime exclusion zone [21 November 1999]: 23.

[102] Ronald S. McClain, "The Coastal Fishing Vessel Exemption From Capture and Targeting: An Example and Analysis of the Origin and Evolution of Customary International Law," *Naval Law Review* 45 (1998): 77. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: total exclusion zone [21 November 1999]: 42.

[103] Levie, "The Falklands Crisis," 205.

[104] Milan Vego, *On Operational Art*, (Newport, RI.: Naval War College Press, 1999), 63.

[105] Gilliland, 26.

[106] Ibid., 16.

[107] Barston and Birnie, 20.

[108] John Woodward and Patrick Robinson, *One Hundred Days*, Bluejacket Books edition (Maryland: Naval Institute Press, 1997), 100-102.

[109] Ibid.

[110] Ibid., 146-164.

[111] Ibid.

[112] Ibid., 158-164.

[113] Gilliland, 24.

[114] Goldie, "Targeting Enemy Merchant Shipping," 14.

[115] Barston and Birnie, 21.

[116] McClain, 42.

[117] Gilliland, 26.

[118] Doswald-Beck, 181.

[119] JMO Department, 1-3.

[120] Goldie, "Targeting Enemy Merchant Shipping," 15.

[121] Van Dyke, 167; Walker, 159.

[122] Of course, NCA approval would be required for such accompanying (and forward leaning) ROE.

[123] Nicolas J. Watkins, "Comment: Disputed Sovereignty in the Falkland Islands: The Argentina - Great Britain Conflict of 1982," *Florida State University Law Review* 11 (Fall 1983): 649. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: maritime exclusion zone [21 November 1999]: 21.

[124] Levie, "The Falklands Crisis and the Laws of War," 205.

[125] Walker, 158.

[126] McNeill, 637-638; Leckow, 638-639; Russo, 391-392.

[127] Russo, 391-392.

[128] McNeill, 637, Leckow, 639, Russo, 391-392.

[129] McNeill, 637.

[130] Russo, 391-392.

[131] Stanley F. Gilchrist, "The Cordon Sanitaire--Is it Useful? Is it Practical?" John N. Moore and Robert F. Turner, eds., *Readings on International Law from the Naval War College Review 1978-1994* (International Law Studies v. 68, Newport, RI.: Naval War College Press, 1995), 132.

[132] Ibid.

[133] William H. Gregory, "Their Tattletales (Our Problems)," *United States Naval Institute Proceedings* 110 (February 1984): 97-100.

[134] Gilchrist, 136.

[135] Gregory, 98.

[136] Gilchrist, 132.

[137] Ibid., 141.

[138] Gilliland, 27.

[139] Thomas and Duncan, 132.

[140] JMO Department, 2.

[141] Gilliland, 27.

[142] Ruth Wedgwood, "Symposium: The United States and the International Criminal Court: Achieving a Wider Consensus Through the "Ithaca Package," *Cornell International Law Journal* 32 (1999): 535. Available [Online]: <http://www.lexis-nexis.com/universe/legal/law review/search terms: maritime exclusion zone [21 November 1999]: 3.

[143] John F. Burns, "Tass Says U.S. Acts in Persian Gulf Imperil Peace," *N.Y. Times*, 8 March 1984, p. 4, col. 3.

[144] Goldie, "Maritime War Zones and Exclusion Zones," 162.

[145] David L. Hall, "The Constitution and Presidential War Making Against Libya," John N. Moore and Robert F. Turner, eds., *Readings on International Law from the Naval War College Review 1978-1994* (International Law Studies v. 68, Newport, RI.: Naval War College Press, 1995), 353.

[146] Schmitt, "Aerial Blockades," 5.

[147] Russo, 392.

[148] Thomas and Duncan, 394.

[149] Ibid., 394-395.

[150] Van Dyke, 158-159.

[151] Ibid.

[152] Ibid., 166-167.

[153] Regan, 53.

[154] Ibid., 55.

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